

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**JOYCE YEARBY, d/b/a MAURY
FUNERAL SERVICES,**

Plaintiff,

v.

YORK CASKET COMPANY, et al,

Defendants.

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CIVIL ACTION NO. H-06-1719

MEMORANDUM AND ORDER

Pending before the Court are Plaintiff's Motion for Continuance (Docket No. 31), and Defendant Batesville Casket Company's Motion to Dismiss (Docket No. 12), Motion to Reschedule Hearing (Docket No. 27), and Motion to Stay Discovery (Docket No. 16). The Court **FINDS** and **HOLDS** that:

Plaintiff's Motion for Continuance is **DENIED**. The motion does not specify which date or deadline Plaintiff seeks to continue, and states only that "[t]he Attorney needs the additional time to resolve a matter out of state." Further, Plaintiff's counsel failed to respond to the Court's inquiries on October 4, 2006 regarding the motion. Because the motion does not adequately show cause why any date or deadline should be continued, the Court denies the relief requested.

Defendant Batesville Casket Company's Motion to Dismiss is **GRANTED**. Because Plaintiff has not properly served Batesville Casket Company under Federal Rule of Civil Procedure 4(m), the Court need not consider the substantive arguments set forth in Defendant's motion. Defendant's remaining motions are hereby **TERMINATED AS**

MOOT, and Plaintiff's claims against Defendant Batesville Casket Company are
DISMISSED WITHOUT PREJUDICE TO REFILEING.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 6th day of October, 2006.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", written over a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**